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410-748—70 1

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 885

SNYDER TANK CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–7a) is reported at 428 F. 2d 1348. The decision and order of the National Labor Relations Board (Pet. App. 9a–98a) are reported at 177 NLRB No. 94.

JURISDICTION

The judgment of the court of appeals was entered on July 27, 1970 (Pet. 1). The petition for a writ of certiorari was filed on October 22, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the findings of the National Labor Relations Board that the employer violated the National Labor Relations Act by discharging an employee because of his union activities; by engaging in other conduct which restrained and coerced employees in the exercise of their right to self-organization; and by refusing to recognize and bargain with the union notwithstanding that it had valid cards from a majority of the employees authorizing it to act as the bargaining representative.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the Appendix to the petition (Pet. App. 7a–9a).

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

1. During September 1966, the United Auto Workers began an organizational campaign among the Company's production and maintenance employees (Pet. App. 13a). Union authorization cards[1] were solicited from the employees at the plant and at meet-

[1] The cards, which were headed "Authorization Card" followed by the Union's name, read as follows (Pet. App. 3a, n. 1):

> I, the undersigned, hereby designate, select and empower the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW, AFL–CIO) as my representative for the purpose of collective bargaining in respect to rate of pay, wages, hours of employment and other conditions of employment.

ings at the Union hall (Pet. App. 13a, 65a–78a). The Company resisted the Union's organizational efforts.

Company supervisors began to interrogate employees about the Union and warn them of adverse effects of unionization.[2] After the first union meeting, for example, Night Foreman Pajak asked employee Dennis Gravelle what had occurred at the meeting and warned that, if the Union got in, the employees would have to stay at their machines the full ten hours of the work day with "no walking around or nothing" (Pet. App. 27a; R. 145a–146a).[3] Foreman Maue told various employees that unionization might result in less work available with concomitant layoffs(Pet. App. 22a; R. 131a–132a); that, with the Union, there would be fewer coffee breaks and a less lenient policy toward absences (Pet. App. 22a–23a; R. 197a–198a); that men with little seniority and physicial disabilities would lose job security (Pet. App. 32a; R. 207a–208a); and that things would generally be "worse" if the Union succeeded (Pet. App. 26a; R. 271a). Supervisors Smith and Salsbury made similar warnings to employees (Pet. App. 29a–30a; R. 275a, 141a–142a).

On October 7, 1966, after securing authorization cards from a majority of the employees (see p. 9, n. 6, *infra*), the Union sent a letter to the Company requesting recognition and bargaining. Shortly thereafter, it filed

[2] One employee, Phillips, was interrogated by four different supervisors concerning his union sympathies (Pet. App. 16a–17a, 30a, 32a; R. 183a, 196a).

[3] "R." references are to the appendix to the briefs in the court below.

a representation petition with the Board (Pet. App. 13a). On October 12, 1966, the Company, by letter, rejected the Union's request for recognition, stating that it did not believe the Union had been voluntarily selected by a majority of the employees (*ibid.*).

A hearing on the Union's representation petition was held on October 27 and 28, and November 14, 1966. During this period Company supervisors continued to interrogate employees. Foreman Maue asked employee Ronald Guest whether he planned to vote for the Union. Guest answered that he did not know but it was none of Maue's affair. (Pet. App. 18a; R. 259a.) Maue then told Guest that, if the Union succeeded, there would be strikes, layoffs, and similar actions that could affect Guest's family (Pet. App. 32a; R. 259a). Maue told employee John Pates that "Snyder would close the doors like they did in Alabama if the Union got in" (Pet. App. 43a; R. 309a–310a), and warned other employees that working conditions would become "stricter" (Pet. App. 23a, 24a–26a; R. 217a–218a, 227a–228a). Foreman Pajak suggested to employee Scherff that his chances of promotion would be improved if the Union lost (Pet. App. 34a–35a). Foreman Salsbury (Pet. App. 33a; R. 275a), Vice-President Snyder (Pet. App. 33a–34a; R. 274a); Plant Superintendent Zimmer (Pet. App. 33a; R. 274a), and Foreman Stark (Pet. App. 26a; R. 256a–257a) engaged in similar conduct.

2. On December 5, 1966, the Company discharged Douglass Gravelle, who had initiated the Union cam-

paign, solicited authorization cards, and testified on behalf of the Union at the Board representation hearing (Pet. App. 54a–55a; R. 170a–172a). Gravelle had never been reprimanded for his work prior to his discharge; in fact, he had received two raises and had been complimented on his performance (Pet. App. 54a; R. 169a). During the Union campaign, Company President Gerald Snyder, basically on the complaint of employee George Glore, accused Gravelle of threatening plant personnel. Glore also told Snyder that he thought the Union had planted Gravelle in the factory (Pet. App. 55a; R. 115a–116a, 181a). Also during this period, Foreman Pajak remarked to employee Waz that Gravelle was getting "too big for his britches" in trying to get the Union into the plant, and that Gravelle was going to try to tell everyone how to run the plant (Pet. App. 55a–56a; R. 273a).

On the night of November 30, 1966, Gravelle put some wooden blocks[4] in the aisle adjacent to his work station, intending later to remove them from the plant by means of an overhead crane. As he was about to get the crane, Foreman Pajak came and asked: "What did you throw the blocks in the aisle for?" Gravelle answered that he had not thrown them. The next day, Gravelle was suspended pending investigation of the incident. (Pet. App. 56a–58a; R. 173a–177a.) On the morning of December 5, Gravelle telephoned Superintendent Zimmel and asked when he could return to

[4] The blocks were approximately 2 to 3 feet long and made from 2 by 4 or 3 by 3 lumber (Pet. App. 56a).

work. Zimmel answered that the investigation had not yet been completed but that the Company would let him know. The next morning, Gravelle received a letter stating that he was terminated. (Pet. App. 59a; R. 179a.)

3. In the period immediately preceding the Board representation election on January 19, 1967 (Pet. App. 13a), Foreman Maue continued to interrogate employees about their union sympathies and to predict that a worsening of work conditions would accompany union success (Pet. App. 25a–26a; R. 337a–338a). Foremen Taylor and Stark engaged in similar conduct (Pet. App. 26a–27a; 30a–31a; R. 236a, 239a–240a, 287a–288a, 339a, 934a–935a, 713a–714a).

On January 12, 1967, Company President Snyder sent a letter to the employees asserting that the Union's campaign promise of job security was a "cruel hoax" (Pet. App. 38a). The letter set forth the names of 11 unionized plants which had allegedly shut down—four of them in the area where the Company's plant was located. According to the letter, two plants closed because they could not continue to operate under the union contract, two because of strikes, and another because of unreasonable union demands. One plant, the letter added, had shut down three months after the union had won an election on the basis of a "job security" campaign. The letter concluded (Pet. App. 41a):

> WHAT HAPPENED TO THE JOB SECURITY OF ALL THESE PEOPLE? In-

> stead of protecting them the unions were instrumental in their being out of work—with no jobs to go back to. We are not saying we will go out of business. We won't so long as we can make a reasonable profit. What we are saying is that much bigger companies than we have been forced out of business through excessive union demands. When they did the employees lost their jobs. You judge from this just how the unions can guarantee you job security.

In a speech on January 18, 1967, the day before the election, President Snyder told the employees that their future could be determined by how they voted the next day. He promised them two additional paid holidays and a 15-cent an hour raise, and that he would investigate forming a grievance committee or procedure. Snyder stated that the Company usually gave raises as a result of an annual review of wages and that its review had revealed that many employees were entitled to increases. He added, however, that the Company was afraid to grant the increases because the Union might file unfair labor practice charges. (Pet. App. 36a; R. 247a, 297a, 299a, 302a–303a.)

The Union lost the representation election and filed objections based on the Company's conduct during the preceding months.[5] The Union also filed unfair labor

[5] After the Union filed objections to the election, employee James Lewis, with Vice-President James Snyder's consent and advice, drafted and circulated a petition among the employees disavowing union support. As Lewis circulated the petition for signatures, Superintendent Zimmel followed him up the aisles, remaining 25–30 feet behind. (Pet. App. 49a–53a; R. 150a, 160a–164a, 304a–308a, 154a, 120a–122a.)

practice charges against the Company. The two matters were consolidated for hearing. (Pet. App. 10a–11a.)

B. THE DECISIONS BELOW

The Board held that the Company violated Section 8(a)(1) of the Act by interrogating employees about their union activities and sympathies; threatening them with economic reprisals, including closing the plant, if they selected the Union as their bargaining representative; promising them benefits if they abandoned the Union; announcing that wage increases were being withheld solely because of the Union; and assisting and encouraging employees in the preparation and distribution of an antiunion petition. (Pet. App. 21a, 31a, 34a, 37a, 41a–43a, 48a–49a, 53a.) The Board further held that employee Gravelle was discharged because of his union activities, in violation of Section 8(a)(3) and (1) of the Act (Pet. App. 63a). The Board rejected the Company's contention that Gravelle was discharged because he threw blocks in the aisle, noting that, although at least four other incidents involving blocking the aisles had occurred, no disciplinary action had been taken against the employees involved (Pet. App. 59a–61a). The Board also found that there were only two other instances of disciplinary discharge without prior warning and that they involved serious offenses such as defying authority and punching an absent employee's timecard (Pet. App. 61a).

Finally, the Board held that the Company violated Section 8(a)(5) by refusing to recognize the Union and bargain with it.[6] It found that the Company's unfair labor practices during the organization campaign so undermined Union support as to make a fair election in the future impossible. The Board therefore set aside the election and ordered the Company to bargain with the Union upon request (Pet. App. 89a, 95a–97a). It also ordered the Company to cease and desist from the unfair labor practices and to reinstate Gravelle with back pay (Pet. App. 87a–89a, 97a). The court of appeals, *per curiam*, sustained the Board's findings and conclusions, and enforced its order (Pet. App. 1a–7a).

ARGUMENT

Petitioner's challenges to the Board's unfair labor practice findings and its bargaining order, which were sustained by the court of appeals, present only evidentiary issues which do not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Re-*

[6] The Union obtained 81 cards from among 151 employees (Pet. App. 65a). One card was rejected by the Examiner (Pet. App. 75a–76a). The Company challenged the cards of 17 other employees—12 on the ground that they were obtained on the basis of misrepresentations, two on the ground that they were insufficiently authenticated, one on the ground that it was obtained by coercion, one on the ground that the signer could not read and had a poor memory, and one on the ground that it was not received by the Union until after its October 7, 1966 letter demanding recognition. The Examiner rejected these challenges (Pet. App. 65a–78a).

lations Board, 340 U.S. 474, 491. In any event, the facts amply support the Board's findings.[7]

The court of appeals, correctly applied the standard articulated in *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575, 606 in rejecting petitioner's objections to certain authorization cards. It found that "[T]he cards were clear on their face; and the trial examiner resolved what conflicting testimony there was against the company" (Pet. App. 7a).[8] Peti-

[7] There is no substance to petitioner's contention (Pet. 1, 5–6) that the court below sustained the Board's finding concerning Gravelle because of an erroneous view that no other employee had been discharged without warning. The court stated (Pet. App. 4a): "Douglas Gravelle * * * was discharged for a minor violation of company work rules, despite an absence of any indication that other employees had been released for *similar first* infractions" (emphasis added). Its later reference (Pet. App. 6a) to "no other instance" must be read in light of the earlier language. Moreover, contrary to petitioner (Pet. 5–6), the Examiner credited Gravelle's testimony that he merely kicked the blocks into the aisle to get them out of the way temporarily, and that he was planning to get the crane to pick them up (Pet. App. 56a–57a, n. 56).

[8] Petitioner objects to the validation of the cards of employees Bellavia, Rollins, Hinderliter, and Matteucci (Pet. 13–14). As to the card of Bellavia, petitioner ignores the fact that the Examiner found that the Union's demand for recognition was a continuous one which extended beyond the date Bellavia's card was received (Pet. App. 72a); in any event, the Union had a majority on October 7, 1966, without his card (p. 9, n. 6, *supra*). As to that of Rollins, petitioner ignores the Examiner's finding (Pet. App. 75a, n. 69) that the erasure and writing over were in the same hand as the writing on the rest of the card. As to the card of Hinderliter, petitioner ignores the Examiner's finding that Hinderliter signed two cards, one of which was unquestionably valid (Pet. App. 72a–73a). And, as to the card of Matteucci, petitioner ignores the fact that the Examiner did not credit Matteucci's version of what representations were made at the meeting where he signed the card (Pet. App. 73a).

tioner's contention (Pet. 16) that a bargaining order is not appropriate because "[t]here was no coercive interrogation, restraint or coercion of employees in their right of self-organization or voting" ignores the Board's finding, sustained by the court of appeals, that throughout the organizing campaign and thereafter the Company engaged in "a campaign of flagrant unfair labor practices" (Pet. App. 95a, n. 2).

CONCLUSION

The petition for a writ of certiorari should be denied.

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